



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0828; FRL-9300-01-OGC]

Proposed Settlement Agreement, Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA)

Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed consent decree to address several claims in a lawsuit filed by Sierra Club, Center for Environmental Law and Policy, and plaintiff-intervenor, the Spokane Tribe of Indians ("Plaintiffs") in the U.S. District Court for the Western District of Washington. On October 21, 2011, the Plaintiffs Sierra Club and Center for Environmental Law and Policy filed a complaint alleging, among other things, that EPA failed to perform duties mandated by the Clean Water Act ("CWA") with respect to Total Maximum Daily Loads ("TMDLs") for segments of the Spokane River and adjacent water bodies that were listed as impaired due to polychlorinated biphenyls ("PCBs"). EPA seeks public input on the proposed consent decree prior to its final decision-making to settle the litigation.

DATES: Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2021-0828, online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). The EPA encourages the public to submit comments via www.Regulations.gov, as there will be a delay in processing mail and no hand deliveries will be accepted. For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>

FOR FURTHER INFORMATION CONTACT: Stephen Sweeney, Water Law Office (2355A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-5491; email address: sweeney.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

On October 11, 2011, Plaintiffs Sierra Club and Center for Environmental Law and Policy filed suit in the federal district court for the Western District of Washington. Plaintiff's original Complaint alleged a failure by EPA to perform nondiscretionary duties under CWA section 303(d)(2), 33 U.S.C. 1313(d)(2), to approve or disapprove TMDLs for PCBs that Plaintiffs asserted the Washington Department of Ecology had constructively submitted for various segments of the Spokane River, and, upon disapproval, to promulgate such TMDLs. Subsequently, the Spokane Tribe of Indians

intervened as plaintiffs and Plaintiffs amended their complaints to file additional claims.

The proposed consent decree would resolve all claims brought by Plaintiffs.

Under the proposed consent decree, EPA's obligations would be to issue the TMDLs for PCBs by a deadline of September 30, 2024, for the following PCB-impaired water segments Assessment Units in the Spokane River, the Little Spokane River, and or Lake Spokane (Long Lake) located in Washington State (or as these same PCB-impaired Assessment Units have been or may be subsequently renumbered by the Washington State Department of Ecology): 17010305000009; 17010305000010; 17010305000011; 17010305000012; 17010307000010; 17010307000774; 17010307009102; 17010307009615; 17010308000018; 47117H513; 47117I6C1; 47117I7d4; 47117I8C2; 47117I5A4; 47117H5J8; 47117I7E2; 47117I7D3; 47117I7B9 and 47117I5A5. EPA also would file status reports with the court every 180 days to apprise the parties to the litigation and the court of EPA's progress satisfying the requirement to issue the TMDLs and of the work EPA intended to undertake during the next 180 day period. The proposed consent decree would not resolve Plaintiffs' claims for attorney's fees, which Plaintiffs would need to file within 165 days of entry of the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the obligations of EPA for resolution of the claims contained in the proposed consent decree from persons who are not named as original parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or any other provision of law. Unless EPA or the Department of Justice determine that they should not consent to this proposed consent decree, the terms of the proposed

consent decree will be affirmed and filed for entry by the Court.

II. Additional Information About Commenting on the Proposed Settlement Agreement.

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA-HQ-OGC-2021-0828) contains a copy of the proposed settlement agreement. The official public docket is located at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The regular hours of the EPA Docket Center Public Reading Room are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; however, due to the COVID-19 pandemic, there may be limited or no opportunity to enter the docket center. At the time of this printing, the docket center is closed to public visitors out of an abundance of caution for members of the public and EPA staff to reduce the risk of transmitting COVID-19. During the closure, Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services, see <https://www.epa.gov/dockets>. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA’s website at www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information

claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. EPA has not included any copyrighted material in the docket for this proposed settlement. If commenters submit copyrighted material in a public comment, it will be placed in the official public docket and made available for public viewing when the EPA Docket Center is open.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section in this document. Please ensure that your comments are submitted within the specified comment period. The EPA encourages the public to submit comments via www.Regulations.gov. There will be a delay in processing mail and no hand deliveries will be accepted due to the COVID-19 pandemic.

EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public

docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Dated: November 24, 2021.

Steven Neugeboren,
Associate General Counsel.

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